FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 741

W. B. HERRON,
Appellant,

v.

THE UNITED STATES OF AMERICA,
Appellee.

JURISDICTIONAL STATEMENT

On Appeal from the United States District Court for the District of Oregon

Appearing herein
In propria persona:
W. B. HERRON,
c/o Western Oil Co.,
10443 N. E. Klickitat,
Portland 20, Oregon,
Appellant.

E. LUCKEY,
United States Attorney,
District of Oregon,
506 U. S. Courthouse, Box 71,
Portland 7, Oregon,
Attorney for Appellee.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

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On Appeal from the United States District Court for the District of Oregon

Appellant Appeals from the Dismissal Order of the United States District Court for the District of Oregon in the above Case, there identified as NO. 60-292, entered on October 14, 1960 and submits this Statement to show that this Court has Jurisdiction of the Appeal and that a substantial Constitutional Question is presented.

OPINION BELOW

The Opinion and Order of the United States District Court for the District of Oregon is not reported. Copies of the Opinion and Order of that Court below are attached hereto as Appendix A.

JURISDICTION

The Order issued by Honorable Chas A. Clark, specially assigned to hear the Jury Case in the United States District Court for the District of Oregon was entered October 14, 1960. Notice of Appeal was filed in the United States District Court for the District of Oregon November 12, 1960, and the time within which the Plaintiff-Appellant must Docket the within Case and record with the Clerk of the Supreme Court of the United States was enlarged to and including the 6th day of March, 1961. There being two extensions of time granted by the Honorable Chas A. Clark, Chief Judge of the United States District Court, Idaho District.

This Case NO. 60-292 filed July [redacted], 1960, is a suit to declare and show that a justifiable cause does exist for this action being filed against the Government. That the matters involved therein are strictly Constitutional concerning serious breaches, wilful violations of the Federal Bill of Rights; thus becomes admissible under those rules of the Supreme Court regulating such Docket Entries. The complete Transcribed Record of the entire proceedings of this Case including the contentions of counsel for the Government and the appellant, acting as his own attorney in propria persona is contained in this printed record under Appendix A. The jurisdiction of this Court is invoked under the securities, grants, liberties and guarantees as specifically set forth in the Federal Bill of Rights and are enumerated herein.

QUESTIONS PRESENTED

Can the United States District Court for the District of Oregon, the people's Federal Court of first instance, in this Case No. 60-292 concerning matters and issues contrary to the Constitution and Laws of the United States; deny appellant his day in Court before an empaneled jury to petition the Government for a redress of his grievances, which were not instituted and filed before the lower Court under or based upon the provisions or regulations of the Tort or Tucker Acts; but solely upon the willful infractions and violations of the Bill of Rights which the Government itself committed, notwithstanding at its beginning had specifically declared; "the right of trial by jury shall be preserved"?

Appellant is not presenting any question herein relative to whether he shall or shall not receive any commensurate damages; merely the question may he have his constitutional right by having his day in Court,—"to petition the Government for a redress of grievances"?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are as follows:

(A)—U. S. Constitution, Article I—The Bill of Rights.

(B)—U. S. Constitution, Article IV—The Bill of Rights.

(C)—U. S. Constitution, Article V—The Bill of Rights.

(D)—U. S. Constitution, Article VI—The Bill of Rights.

(E)—U. S. Constitution, Article VII—The Bill of Rights.

(F)—U. S. Constitution, Article VIII—The Bill of Rights.

(G)—U. S. Constitution, Article IX—The Bill of Rights.

(H)—U. S. Constitution, Article X—The Bill of Rights.

The above constitutional provisions are printed in Appendix B.

STATEMENT

That the matters involved in appellant's Case are strictly constitutional violations is most apparent. They concern a number of serious breaches of the Federal Bill of Rights; furthermore and of major premise, is the categorical imperative denying appellant the constitutional privilege of being granted a trial that the matters and issues of his grievances be adjudicated by a jury. All the plaintiff-appellant ever received was an "eleven minute" session at a Hearing on a Motion to Quash the Service of His Complaint and forthwith Dismiss the Case.

The Complaint filed in this Case shows plaintiff-appellant requested a jury trial. Notwithstanding that, the Court below elected to deny appellant his constitutional right to have a trial before a jury Court; and further decide the Case forthwith, without any trial

whatsoever; at the time Court heard the Motion to Quash Service of Plaintiff's Complaint. The transcribed record of the hearing proceedings recorded herein—Appendix A—shows, to wit: That Mr. Harr, Deputy U. S. Attorney, asked the Court if he had read the Complaint; the Court replied, "Yes, I have. I have read it very carefully and studied the matter considerably before appearing here on the bench." Thereby it is well established the Court acknowledged plaintiff had requested a jury trial.

Furthermore it is well established that: the Court being fully advised in the premise, notwithstanding, proceeded to try the Case and dismiss it at once, all consummated in a time period of exactly "eleven minutes". The Court's quote "I feel there is no reason to grant any extension of time in this Case, and I will proceed to decide it."

Moreover, to well denote the Court was much in doubt about the constitutionality of denying plaintiff-appellant's rights to his day in Court before an empaneled jury; is well reflected and noted by the Court's own preliminary statement as shown in the printed record of Appendix A; eighth paragraph from the last, to wit: "although the Court is putting itself in a questionable position in not sustaining the Motion without comment, I will comment to this extent: * * * "

By reason of the foregoing matters relative to the Dismissal Order of the Court below, and the subsequent filing of appellant's appeal to the Honorable Supreme Court of the United States via this means of applica-

tion, herein respectfully requests that his Jurisdictional Statement be docketed that a justifiable opportunity will thus be forthcoming therefrom to obtain the constitutional privilege therein provided to settle matters concerning a federal grievance.

Therefore appellant prays that an Order be issued by the Honorable Supreme Court reinstating appellant's Complaint No. 60-292 in the same Court below, and with the same specially assigned Honorable Chief Judge or his associate to said Case being satisfactory; as providence advises appellant the buds of truth concerning Cases Nos. 60-292 and 7975, its parent Case, have fully blossomed by now.

Dated this 3rd day of March, 1961, at Portland, Oregon.

W. B. HERRON
Appellant in propria persona.

CERTIFICATE OF SERVICE

The undersigned, W. B. Herron, the plaintiff-appellant herein acting as his own attorney appearing in propria persona does hereby certify: that in compliance with paragraph I of Rule 33 of Revised Rules of the Supreme Court of the United States, two copies of the foregoing Jurisdictional Statement were placed in a sealed envelope properly addressed to C. E. Luckey, United States District Attorney for the District of Oregon, 506 U. S. Courthouse, Box 71, Portland 7, Oregon, and was forwarded via certified mail, return receipt requested and deposited in the mail depository at the Main Branch Portland, Oregon, Post Office at Broadway and S. W. Glisan Street on this date.

That inasmuch as appellant is not represented by counsel a member of the bar of the Supreme Court of the United States, he therefore will furnish proof of such service having been made by forwarding to the Clerk of the Supreme Court of the United States, the certified mail receipt together with its return receipt card immediately upon receipt of same from the recipient.

Dated this 3rd day of March, 1961, at Portland, Oregon.

W. B. HERRON
Appellant in propria persona.

W. B. Herron
c/o Western Oil Co.
10443 N.E. Klickitat
Portland 20, Oregon.

APPENDIX A

The complete Certified Transcribed Record of the entire Proceedings of this Case held by the Court below reads as follows:—

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

W. B. Herron,)
Plaintiff.)
vs.) Civil No. 60-292
) TRANSCRIPT
United States of America,)
Defendant.)

This matter came on for hearing before the Honorable Chas A. Clark, Chief Judge of the United States District Court, District of Idaho, sitting by special assignment in the District of Oregon, at Portland, Oregon on October 14, 1960 at 2 o'clock P.M.

APPEARANCES

W. S. Herron, Esq., Portland Oregon
Appearing in person.

C. E. Luckey, United States District Attorney for the District of Oregon, Portland, Oregon

Victor E. Harr, Assistant United State District Attorney for the District of Oregon, Portland, Oregon
Attorneys for the Defendant.

G. C. Vaughan
Reporter

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OCTOBER 14, 1960
2 o'clock P.M.

THE COURT: Are you gentlemen ready?

MR. HARR: The Defendant is ready.

MR. HERRON: The Plaintiff is ready.

THE COURT: You may Proceed Mr. District Attorney.

MR. HARR: If the Court please, this matter is before the Court on Defendant's motion to quash service and dismiss the cause. With the motion the Government has filed a short memorandum of authorities.

Might I inquire whether the Court has read the complaint?

THE COURT: Yes, I have. I have read it very carefully and studied the matter considerably before appearing here on the Bench.

MR. HARR: Well, I really don't have anything to add to what I set forth in the memorandum of authorities. I feel that the one case that I cited in the second paragraph, that of Cromelin v. United States is, no doubt, controlling. I didn't say there that certiorari was denied in that case and therefore it would appear that would be the final disposition of this particular litigation. So, if the Court has ready my memorandum I will rest on that.

THE COURT: Do you have anything to say Mr. Herron?

MR. HERRON: I don't know whether I gave the wrong impression in my complaint or not, I didn't

mean to, if I did. I did use the word tort a time or two, meaning, in that sense that it is a tort by reason of the fact that it is not of a contracting nature. If is a constitutional matter, violation of the constitution, and under the heading, shall we say, of it being a guaranty of a civilian's right to be free from arbitrary arrest and arrest without any due process of law. So, I don't challenge at all counsel for the Government's contentions. I didn't, in fact, have a chance to study them because the time was so short, and I have other matters,—I have a case in the Supreme Court of the United States and I am working on the service right now and I haven't had a chance to check on them but I am perfectly willing to take his word that they are authentic and proper. I believe that they are, but my action is not based upon the Tort Act nor the Tucker Act. It's in violation of the Constitutional rights as set forth in the Constitution of the United States through the Bill of Rights, particularly the fifth and the fourteenth Amendments. However, I think there are other amendments that are applicable and I think I will be able to show that when the transcript ~~or excerpts~~ of the transcript are made available in that case, 7975, the Insurance Claim case, which this is the outgrowth of. So my contentions are that I stand upon that ground, being, what I am sure I can prove, Your Honor, an overt act of the Court in arbitrary arrest. Just for one instance, the time that I was arbitrarily removed from the Court room by the United States Marshal the Judge of the Court made the smart retort: "Herron got just what he was looking for", and that brought a hilarious reply from my oppos-

ing counsel. That's just one instance. I only cite that, not that I like to and to incorporate it in the records of the Court, but it is mandatory upon me to show that a vicious violation of my constitutional rights has taken place, and I think I have a recourse and a very legitimate and proper one by that reason, because it is founded upon the basic principles of our God blessed Constitution of the United States of America which I claim to have in other pleadings in the other case. It is absolutely founded on God inspired men from the ten commandments of the Holy Writ, and the only Government that has a constitution of that type and these guarantees in the Bill of Rights were not just promiscuously put there as a matter of form to be followed or to be guided by, they are a guaranty that those things would not happen, but they definitely did, which I am sure I can show. So for that reason I think I should have my right, title and interest of having my day in Court.

I don't know, Your Honor, whether Counsel for the Government received the motion this morning or not. I filed a motion this morning for,—you see the time was so short,—I was late in getting service, through no fault of mine or counsel for the Government, because I assume that he sent the service by way of certified mail—

THE COURT: —I have the motion here.

MR. HERRON: I appreciate that then. I thought I would just draft a quick motion so that you will know a little something and have something of the record before you in as much as you are not one of the judges of this particular District, and so you would have something to show my contentions.

THE COURT. I have given this matter a great deal of study. I will take a short recess of the Court and make my rulings as soon as I can marshal together a few notes that I have made. It will not take very long and I will also rule on this motion at that time. We will take a ten minute recess.

October 14, 1960 2:45 P.M.

THE COURT: I feel there is no reason to grant any extension of time in this case, and I will proceed to decide it.

This is before the Court on a Motion To Quash Service and Dismiss, filed against the complaint in this action. Right at the threshold the Court must determine whether or not the complaint states a claim that will withstand this motion. The complaint is so ridiculous that it appears to have been drawn by a person very badly confused and it is quite questionable whether the Court should even discuss it. The entire complaint only makes one charge. As stated in the complaint it stems from and is the outgrowth of deliberate overt rife acts of vicious and rampant violations of the plaintiff's constitutional rights as appears in the Federal Bill of Rights, such acts being committed by the Federal Judge named, and his two aiding and abetting collaborators and conspirators, naming them, which constitutes the full impaneled body of judges of the United States District Court of the District of Oregon. The complaint then alleges that the "violation as herein referred to occurred in case number 7975, a fire insurance claim case filed February 25, 1955, in said Federal District

Court." nowhere is it alleged that the overt act is claimed to be.

It appears from the complaint that this case is now on appeal. It is well established that when a person is aggrieved by the acts or decisions of a lower Court an adequate remedy is provided by appeal to a higher court. Under our system of jurisprudence every safeguard is provided for a fair determination of this issue and the Courts are open for such determinations, since from the commencement of the proceedings a record is made, and at the conclusion of the trial in the district court any one who is not satisfied can have every act of the District Judge reviewed, not only by the Circuit Court of Appeals, but can ask to have their decision reviewed by the Supreme Court of the United States. It appears from the complaint on file herein that the plaintiff is following that procedure.

Although the Court is putting itself in a questionable position in not sustaining the motion without comment, I will comment to this extent:

First, to say that the United States cannot be sued except where they have specifically given their consent to be sued, and it is clear that no such consent has been given in a case of this kind.

Second, The judges here are not in any way under the control of the United States. They are independent from any control whatsoever, and their independence is carefully guarded by the Constitution and Laws of the United States.

Third, no jurisdiction is conferred upon Federal District Courts to hear any claim against a Federal Judge or the Government for any act of a Federal Judge while acting in the scope of his office.

In this country of ours we give everyone the right to come into court and state their claim, and the Clerk has no right to withhold the filing of the complaint and we have no desire to deny that right, but here is a case where the plaintiff has used the Court to file an abusive and false tirade against these distinguished judges of this court. There should be, and it may be that he could be penalized for doing it. That is a matter that I will give further consideration to, and if the Court determines that any action can be taken I will request the District Attorney to act.

It may be possible, and I think probable, that the plaintiff is ill and disturbed in mind. If that is the case I am sorry, and I will approach any further action as to advice to the District Attorney to proceed against him with this in mind.

There should be some way that the Court could order this vicious paper, filed under the guise of a complaint, expunged from the records of this Court, but all that this Court can do is to say that it is an abusive tirade without foundation, and announce my decision, and that decision is that the motion will be sustained in its entirety and the action dismissed, and it is so ordered.

Court will be in recess.

State of Idaho)
) ss.
County of Ada.)

I, G. C. Vaughan, hereby certify that I am one of the official Court Reporters for the United States District Court for the District of Idaho, and that I am the one who took the proceedings had in and about the hearing of the above entitled cause in shorthand and thereafter transcribed the same into longhand (typing) and

I further certify that the foregoing transcript consisting of pages numbered to 10 is a true and correct transcript of the proceedings had in said matter on October 14, 1960.

In Witness whereof, I have hereunto set my hand this 17th day of November 1960.

G. C. Vaughan
Reporter.

APPENDIX B

The applicable provisions of the United States Constitution are:

(A)—U. S. Constitution, Article I—The Bill of Rights; * * * the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

(B)—U. S. Constitution, Article IV—The Bill of Rights; the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(C)—U. S. Constitution, Article V—The Bill of Rights; no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, * ** nor be deprived of life, liberty or property, without due process of law; * * *

(D)—U. S. Constitution, Article VI—The Bill of Rights; in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be con-

fronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

(E)—U. S. Constitution, Article VII—The Bill of Rights; in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, * * *

(F)—U. S. Constitution, Article VIII—The Bill of Rights; excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

(G)—U. S. Constitution, Article IX—The Bill of Rights; the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(H)—U. S. Constitution, Article X—The Bill of Rights; the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.